80-377

No.

Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

MAY TERM, 1980

AGNES VOGEL, Appellant

vs.

JAMES L. ROBISON and

BERNARD J. VOGEL, Appellees.

ON APPEAL FROM THE APPELLATE

COURT OF THE THIRD DISTRICT

OF ILLINOIS

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

QUESTION PRESENTED

WHETHER THE INTERSPOUSAL TORT IMMUNITY GRANTED IN ILLINOIS REVISED STATUTES, CHAPTER 40, SECTION 1001, WHICH PREVENTS A PERSON FROM COMPLAINING

AGAINST HIS OR HER SPOUSE FOR A TORT COMMITTED DURING COVERTURE, VIOLATES THE EQUAL PROTECTION PROVISION OF THE UNITED STATES CONSTITUTION.

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TABLE OF AUTHORITIES

Cases:

Zablocki v. Redhail, 434 U.S. 374.

Boddie v. Connecticut, 401 U.S. 371.

Loving v. Virginia, 388 U.S. 1.

Griswald v. Connecticut, 381 U.S. 479.

Brandt v. Keller, 413 Ill. 503, 109 N.E.2d 729.

Tyrken v. Tyrken, 63 Ill.App.3d 199, 379 N.E.2d 804.

Constitution and Statutes:

Constitution:

Fourteenth Amendment.

Statute:

Illinois Revised Statutes, Chapter 40, Section 1001.

28 U.S.C. Section 1257 (2).

Miscellaneous:

92 A.L.R.3d 901.

Comment, 25 Hastings L.J. 1226.

U.S. Bureau of the Census, 1979.

OPINIONS BELOW

A judgment of the Circuit Court of LaSalle County, State of Illinois, was affirmed by a reported decision of the Appellate Court of Illinois, Third District. The Supreme Court of Illinois denied a petition for leave to appeal.

JURISDICTION

This is a petition for review by appeal in the United States Supreme Court.

The judgment of the Appellate Court was entered on January 15, 1980. No petition for rehearing was filed in the Appellate Court. A notice of appeal was filed March 11, 1980, in the Supreme Court of the State of Illinois and was denied May 29, 1980.

The United States Supreme Court has jurisdiction to review final judgments in state court cases under 28 U.S.C., Section 1257 (2), when the validity of a state statute is questioned on constitutional grounds and the state court has upheld it as valid.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The Fourteenth Amendment provides in part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 1001 of Chapter 40 of Illinois Revised Statutes, provides:

> "A married woman may, in all cases, sue and be sued without joining her husband with her, to the same extent as if she were unmarried; provided, that neither husband nor wife may sue the other for a tort to the person committed during coverture. An attachment or judgment in such action may be enforced by or against her as if she were a single woman."

STATEMENT OF FACTS

On November 22, 1978, appellant Agnes Vogel filed a complaint against appellees Bernard J. Vogel and James M. Robison for damages she sustained when the car driven by Mr. Vogel, her spouse, in which she was riding as a passenger, collided with a car driven by James M. Robison.

Appellee Bernard J. Vogel made a motion to dismiss the counts of the complaint which were against him because such a cause of action is barred as a matter of law by Illinois Revised Statutes, Chapter 40, Section 1001.

In her written objections to the motion to dismiss filed in the Circuit Court of LaSalle County on February 14, 1979, appellant Agnes Vogel first raised the federal question which is cited as the basis for review herein as follows:

> "3. That the provision of Chapter 40, Section 1001, which provides for spousal tort immunity is unconstitutional in that it deprives plaintiff of equal protection of the law, all in violation of the fourteenth amendment of the Constitution of the United States."

The order of the Circuit Court of LaSalle County dismissing the complaint of Agnes Vogel as to Bernard J. Vogel with prejudice was entered February 15, 1979.

This federal issue was also raised by appellant through an appeal from the order of the Circuit Court of LaSalle County. The issue presented for review was whether the statute vio-

lated the equal protection clause by unreasonably and capriciously limiting the rights of married couples viz-a-viz couples living together in a familial context.

The order of the Appellate Court of Illinois, Third District, in Cause No. 79-318, affirmed the ruling of the trial court on January 15, 1980, by providing in part:

> "Subsequently, the Illinois Appellate Court has twice upheld the constitutionality of paragraph 1001 on equal protection grounds. (citations omitted.) The Tyrken court summarized its holdings with this observation:
>
> > 'The bar against tort actions between spouses during coverture applies equally to husband and wife and cannot therefore be said to violate plaintiff's right to equal protection.' Tryken (sic) v. Tyrken (1978), 63 Ill.App.3d 199, 203, 379 N.E.2d 804, 808.
>
> It is clear that the constitutionality of paragraph 1001 has consistently been upheld."

Finally, appellant Agnes Vogel addressed the violation of the equal protection provision in a petition for leave to appeal to the Supreme Court of Illinois on March 11, 1980. The Illi-

nois Supreme Court denied appellant leave to appeal on May 29, 1980.

SUBSTANTIAL FEDERAL QUESTION

The question presented in this appeal is so substantial as to invoke the mandatory review of the Supreme Court to follow the Constitution of the United States as opposed to a state law when the two conflict. True, state courts are the final interpreters of state law, but only in a way that does not violate the minimum guarantees contained in the Constitution. Where a state court defends the validity of a state statute which restricts access to the judicial process through a classification system on federal equal protection grounds, the Supreme Court must review that decision to preclude any inclination of the state court to guard state interests over federal standards.

Under the Fourteenth Amendment, a state may not deny equal protection of the law to its citizens by any arbitrary or unreasonable distinctions.

State action must affect and treat alike, with substantial equality and uniformity, all persons similarly situated. Therefore, a state law may not grant to one a right or benefit which under similar circumstances is barred to another.

In the instant case, the Illinois state courts have validated the bar to interspousal suits for torts to the person committed during coverture established by Illinois Revised Statutes, Chapter 40, Section 1001, in the face of an equal protection challenge.

Appellant Agnes Vogel invokes review of this decision which upholds a law that classifies persons on its face for different treatment in two ways. First, the challenged statute is restrained by the equal protection provision of the Fourteenth Amendment because it involves a fundamental right. Secondly, Agnes Vogel urges review of the Illinois statute by this court because it allocates access to judicial machinery in a totally arbitrary and irrational manner. It is her contention that the State of Illinois has no power

or right to disregard the Constitution of the United States, and she therefore turns to the United States Supreme Court on appeal to uphold the supremacy of federal law and to obtain relief.

I.

THE CHALLENGED STATUTE SIGNIFICANTLY AFFECTS A FUNDAMENTAL RIGHT AND THEREFORE MUST BE REVIEWED.

A. The marriage relationship is a fundamental right guaranteed by the equal protection clause.

A fundamental right is any of a group of individual right which has no specific textual basis in the constitution but is nonetheless recognized by the court as having a value essential to individual liberty. A legislative act which affects the exercise of a fundamental right justifies stricter review to guarantee its preservation.

The right to privacy was first recognized as a fundamental right in Griswald v. Connecticut, 381 U.S. 479 (1965). A Connecticut statute

prohibited the use of contraceptives by married persons. The Supreme Court therein examined the history and workings of American legal philosophy and recognized that the "right to privacy" exists as a blanket covering the relationships of married persons which cannot be removed by legislative acts which further no compelling state interest.

Since Griswald, the incidents and instrumentalities of marriage have been preserved. The freedome of choice as to a marital partner was recognized in Loving v. Virginia, 388 U.S. 1 (1967). The court in Boddie v. Connecticut, 401 U.S. 371 (1971), continued to preserve the freedom by guaranteeing access to the courts to dissolve a no longer wanted marriage. More recently, a statute which prevented the marriage of persons who were not supporting offspring from a prior union was disallowed. Zablocki v. Redhail, 434 U.S. 374 (1978). Clearly, acts which interfere with the exercise of a person's fundamental right to marry and to conduct a marriage free from governmental

burdens through classifications have been reviewed and invalidated as significant burdens on a fundamental right.

B. The marriage relationship is burdened by Illinois Revised Statutes, Chapter 40, Section 1001.

The bar to interspousal tort suits affects this fundamental right. Depriving married persons of a remedy at law for torts committed against their person by their spouse interferes both with the entry into marriage and with the ability to continue a marital relationship. The fundamental right of persons to freely conduct their private affairs is denigrated.

1. The Interspousal Tort Immunity Act affects the freedom of choice to enter into marriage.

Examining the clear words of the proviso shows its impact upon the freedom to enter into a marriage. Take, for example, an ordinary negligence case in which an unmarried couple who live together drive to the store to make

some purchases. Along the way, the driver makes a left-hand turn into the shopping center off the main street without due care and, as a result, collides with an oncoming car from the other direction. The passenger, who sustains head and shoulder injuries, files an action against the driver on the grounds that the driver's negligence was the proximate cause of the injuries which the passenger has sustained. Since this couple is unmarried, the injured passenger will be able to maintain the action; whereas, the people know that if they were married and live in Illinois, the injured party would be barred from entertaining an action in the state courts of Illinois.

This inequity is a significant and major factor in many couple's decision to live outside the bonds of matrimony. The inability to achieve a remedy at law undermines the age-old institution of marriage, for more and more persons will opt to live together without the benefit of solemnization in order to maintain greater rights. To

remain unmarried for personal issues is one thing, whereas to remain unmarried on account of state legislation which makes marriage less desirable, is something completely different, and not to be tolerated. It is against the fundamental principles of public policy universally accepted throughout the United States of America which seek to uphold and preserve the great institution of marriage.

2. The Interspousal Tort Immunity Act affects the freedom of individuals to conduct their marriage as they choose.

Not only is the freedom to enter into a marriage impinged upon by the bar to interspousal tort suits, but also the right to operate a marriage without undue interference is disturbed. The short duration of many marriages indicates that marriage is no longer the foundation upon which family life is built. The Interspousal Tort Immunity Act, however, imposes an even greater strain upon the institution of marriage.

To deny the right of a spouse in a legal marriage relationship to recover for the injuries

inflicted upon that spouse by the negligence of the other spouse only justifies an injustice, and results in greater bitterness and disunity between married couples. When an individual sustains an injury and realizes that he has no judicial remedy simply because of the bond of a particular relationship, his instinctive reaction is to break that bond and repudiate the wedding banns.

The courts must uphold the institution of marriage and attempt to preserve its sanctity from erosion and devastation imposed without reason. If wrongs between spouses could be righted, then justice and forgiveness could thrive and fewer reasons to avoid entrance into marriage and to seek dissolution of marriage would exist.

This Court has long recognized the freedom of choice which envelops marital concerns and demands their privacy be honored and protected from legislative acts which seek to erode a fundamental right for no compelling reason. The Illinois statute which prevents a person from obtaining access to the judicial process when wronged

by a spouse so significantly burdens the freedom of individuals to choose and conduct a marriage as to warrant review by this Court.

II.

THE CHALLENGED STATUTE RESTRICTS ACCESS TO THE JUDICIAL PROCESS IN AN ARBITRARY AND IRRATIONAL MANNER AND THEREFORE MUST BE REVIEWED.

A second, independent reason exists which renders the instant case so substantial as to merit review by the Supreme Court. The deprivation by this state of the right to obtain a legal remedy simply because of the marital relationship between the parties no longer bears any rational relationship to any legitimate state interest. The very terms of the classification in Illinois Revised Statutes, Chapter 40, Section 1001, treat similar persons, i.e., the injured victim of a negligent action by another, differently in similar situations in violation of the equal protection provision. The validity of this statute must be examined.

A. The classification bears no rational

relationship to the promotion of familial harmony.

The Interspousal Tort Immunity Act was intended by the legislature partially to promote familial harmony. The myth that forbidding one spouse to pursue a remedy for a clearly recognized wrong promotes familial harmony has long since been exposed by common sense. In fact, the Illinois Supreme Court recognized before the statute challenged herein was adopted as such, in Brandt v. Keller, 413 Ill. 503, 109 N.E.2d 729 (1952), that domestic tranquility would not be disturbed by allowing such actions between spouses.

Currently, twenty-four states have ruled that interspousal tort immunity is not effective for preserving marital harmony. c.f. 92 A.L.R. 3d 901, 935-936. If the state interest were truly to preserve a "happy" family character, the prosecution of any legal dispute would be precluded as likely to lead to disharmony. Nevertheless, the law permits an action between spouses for a breach of contract, for collection of a promissory note, and for an injury to property.

Consider also the treatment of other individuals within a family unit. Parents may sue their children and vice versa without a legislative bar. Siblings may freely institute legal proceedings on opposing sides. However the challenged statute is viewed, it singles out one particular relationship within the family unit and prevents only one type of prosecution between persons in that relationship. Such a classification is unreasonable, irrational and in derogation of the rights of married persons to equal protection under the law.

B. The classification bears no rational relationship to the prevention of collusive suits.

The second goal of the Illinois legislature was to prevent collusion in the prosecution of lawsuits. It is worthy to note that the number of couples living together without the formalities of marriage has skyrocketed. "The 1970 census bureau figures indicate that today perhaps eight or ten times as many couples are living together

in a familial context without being married as cohabited ten years ago." Comment, 25 Hastings L.J. 1226 (1974). In the July, 1979, figures released by the Census Bureau, the number of couples foregoing marriage had doubled again. Clearly, there is a significant number of couples who live together in a familial context.

Our society and legislatures have lifted virtually all of the early sanctions against cohabitation in a recognition of this upheaval in lifestyles. Today, unmarried couples openly pool their income and expenses, engage in sexual activity and conceive and bear children. No longer do the children of such relationships suffer the stigma of illegitimacy. In short, aside from the right to share future acquisition of property and earnings, married persons stand before this court in exactly the same position as individuals who elect to cohabit without the formality of marriage.

Because of this prevalence and atmosphere of acceptance, the relationship between unmar-

ried cohabiting individuals inspires exactly the same incentive for collusion as between married persons. Although the property rights are dissimilar, the emotional and psychological ties are strong. Yet only the married couples are singled out and prohibited from bringing a civil suit against their partners.

The potentiality of collusion exists in all litigation. Nonetheless, twenty jurisdictions have discounted the risk of fraud and collusion between spouses as a reason to bar tort suits. c.f. 92 A.L.R.3d 901, 937. They have recognized that all persons who are similarly situated and live under the same conditions should be governed by laws which equally protect each one.

From the fact that there is now a social parity between married and unmarried couples, one must conclude that there should be a legal parity also. Due to the arbitrary and regressive statute challenged in this appeal, married persons are prohibited from pursuing a remedy for a wrong committed

upon their person by a spouse. No such restrictions have been levied against unmarried couples.

This classification, however, does not relate to preventing collusion. It merely serves, in an arbitrary and irrational manner, to deter suits based on legitimate wrongs. The Supreme Court should recognize the substantial injustice which this statute perpetrates in its violation of the equal protection clause and grant this appeal.

III.

CONCLUSION

The time has come for the Supreme Court to consider the constitutionality of the Interspousal Tort Immunity Act embodied in Illinois Revised Statutes, Chapter 40, Section 1001. The statute denies married persons access to the judicial system in violation of the equal protection clause of the United States Constitution and should therefore be reviewed.

The Illinois Interspousal Tort Immunity Act burdens the fundamental right of freedom in

marriage. It discourages couples from entering marriage and encourages couples to dissolve a union already formed. In addition, there is no constitutional foundation for the classification. No rational relationship exists between this classification and any legitimate state interest. The statute challenged herein is clearly significant and substantial enough to merit consideration by this Court.

WHEREFORE, appellant prays this Court to grant her petition to appeal and to strike the unconstitutional provisions of Illinois Revised Statutes, Chapter 40, Section 1001.

Respectfully submitted,

LOUIS E. OLIVERO
Attorney for Appellant

APPENDIX

Copy of the order entered by the Circuit Court of LaSalle County in words and figures as follows:

This matter coming on for hearing on the 15th day of February, 1979, on the motion of the certain defendant, Bernard J. Vogel, for dismissal of Counts III and IV of plaintiff's Complaint, and it appearing to the Court that the parties hereto have received due and proper notice of said motion and the hearing thereon, and the defendant, Bernard J. Vogel, appearing by Berry & O'Conor, his attorneys, and the plaintiff, Agnes Vogel, and the defendant, James M. Robison, appearing by their respective attorneys of record, and the Court having read and considered said motion, together with the affidavit in support thereof and having heard and considered the arguments of counsel and now being fully advised in the premises,

IT IS ORDERED that the motion of the certain defendant, Bernard J. Vogel, for dismissal of Counts III and IV of plaintiff's Complaint be and the same

is hereby granted and allowed in full and Counts III and IV of plaintiff's Complaint are hereby dismissed with prejudice.

The Court finds that there is no just reason for delaying enforcement or appeal of this order.

Judge Leonard Hoffman

ENTER: February 15, 1979

Copy of the decision of the Illinois Appellate Court, Third District, in words and figures as follows:

Scott, J.

On November 22, 1978, plaintiff, Agnes Vogel, filed a complaint against defendants James M. Robison and Bernard J. Vogel for damages she incurred when the car driven by her husband, defendant Vogel, in which she was riding as a passenger, collided with the car driven by defendant Robison. Defendant Vogel moved to dismiss all counts against him contending in said motion that the actions were barred by statute. The circuit court of LaSalle County granted the motion by defendant Vogel on February 15, 1979. From that order of dismissal plaintiff appeals.

The statute on which defendant Vogel relies, with the concurrence of the circuit court, reads as follows:

> "A married woman may, in all cases, sue and be sued without joining her husband with her, to the same extent as if she were unmarried; provided, that neither husband nor wife may sue the other for a tort to the person

> committed during coverture. An attachment or judgment in such action may be enforced by or against her as if she were a single woman."

Ill. Rev. Stat. 1977, ch. 40, par. 1001.

Plaintiff does not deny that paragraph 1001 would, if applied to the facts of the case sub judice, bar the action because it alleges a tort committed during coverture. Rather, plaintiff asks this court to find paragraph 1001 unconstitutional under the equal protection clauses of the United States and Illinois constitutions. U. S. Const., amend. XIV, sec. 1; Ill. Const., art. I, sec. 2.

By way of history, the Illinois Supreme Court in 1952 held that the common law doctrine of intraspousal immunity would no longer be followed in this state. (Brandt v. Keller (1952), 413 Ill. 503, 109 N.E. 2d 729.) The legislature responded the following year with paragraph 1001, thereby establishing and confirming the Illinois policy.

Since 1953, the constitutionality of the legislature's policy as embodied in paragraph 1001 has been tested. In Heckendorn v. First National

Bank of Ottawa (1960), 19 Ill. 2d 190, 166 N.E. 2d 571, cert. den. 364 U.S. 882, the Illinois high court held that paragraph 1001 did not violate the due process clause of either the State or Federal constitutions. (U.S. Const., amend. XIV, sec. 1; Ill. Const., art. I, sec. 2.) A similar ruling was the result of the reviewing court's decision in Wartell v. Formusa (1966), 34 Ill. 2d 57, 213 N.E. 2d 544. Subsequently, the Illinois Appellate Court has twice upheld the constitutionality of paragraph 1001 on equal protection grounds. (Steffa v. Stanley (1976), 39 Ill. App. 3d 915, 350 N.E. 2d 886; Tyrken v. Tyrken (1978), 63 Ill. App. 3d 199, 379 N.E. 2d 804.) The Tyrken court summarized its holding with this observation:

> "The bar against tort actions between spouses during coverture applies equally to husband and wife and cannot therefore be said to violate plaintiff's right to equal protection."

Tryken (sic) v. Tyrken (1978), 63

Ill. App. 3d 199, 203, 379 N.E. 2d 804, 808."

It is clear that the constitutionality of paragraph 1001 has consistently been upheld.

The doctrine of stare decisis is applicable where a statute is attacked on constitutional grounds which have been raised and ruled on in prior cases. (Gouker v. Winnebago County Board of Supervisors (1967), 37 Ill. 2d 473, 228 N.E. 2d 881; Berk v. County of Will (1966), 34 Ill. 2d 588, 218 N.E. 2d 98.) We find no authority in the cases cited by the plaintiff that marks a departure from the rule of Heckendorn, Wartell, Steffa, and Tyrken. Absent such authority, we are bound by the rule of stare decisis to stand by that which was decided.

The decision of the circuit court of La-Salle County is affirmed.

Affirmed.

ALLOY, J., and STENGEL, J., concur.

Copy of Illinois Supreme Court denial of leave to appeal dated May 29, 1980, in words and figures as follows:

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Notice of appeal to the Supreme Court of the United States, filed on August 20, 1980, in words and figures as follows:

1. Notice is hereby given that AGNES VOGEL hereby appeals to the United States Supreme Court from the judgment entered herein on January 15, 1980.

2. This appeal is taken pursuant to 28 U.S.C., Section 1257 (2).

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